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No. 420.

Reply Brief of Trude for Appellants

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OCTOBER TERM, A. D. 1900.

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FRED LEE RICE, FRANK RUTLEDGE AND THOMAS JONES

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

REPLY BRIEF OF APPELLANTS ON MOTION TO ADMIT TO BAIL.

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IN THE

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Reply Brief of Appellants on Motion to Admit to Bail.

I.

MAY IT PLEASE THE COURT:

The appellants in the case at bar are citizens of the United States (Rec., 2), and their right to bail at the time of their arrest and now, is a constitutional right, under the federal and state constitutions, which cannot be legally denied them when the treaty is silent on the subject.

A. & E. Ency. of Law, 3 Vol. (Sec. Ed.), 665.
Com. v. *Lemley*, 2 Pitts. (Pa.), 362.
State v. *Crocker*, 40 Pac. Rep., 687.
Ex parte Bridewell, 57 Miss., 39.
In re Perry, 19 Wis., 676.

The case of Ex p. Erwin, 7 Tex. App., 288, one of the cases cited by appellee, is not in point and not an authority against the right of appellants to be admitted to bail. That case was an extradition matter between states in the Union, and not an international extradition case, such as the one at bar, and the court there refused bail because it was there held, that since the federal constitution contained a provision regarding interstate extradition to the effect that the prisoners "Shall * * * be delivered up," the state constitution of Texas allowing bail could not be invoked or applied. If the reasoning in the Erwin case was good, and if the opinion is good law on the proposition in issue in that case, it cannot be said that the case has any application whatever under the facts in the case at bar, for the reason that the federal constitution contains no such provision whatever regarding international extradition.

The other case cited by appellee, that of *In re* Carrier, 57 Fed. Rep., 578, was an opinion of a district judge, and I submit, that the reasonings in that case are not sound, and the conclusions there reached are bad, and that the rule there announced, ought not to be followed. The court there said: "It was not a question whether larceny was a crime bailable by the common law or by our law, or the law of Canada."

This was an erroneous assumption to begin with. The opinion then went on to say, that the granting of bail was a matter provided by statute, and unless the statute expressly provided for bail, no bail could be given; in this the court erred again.

In *Ex parte* Dyson, 25 Miss., 359, it was held, "The action of the court was not controlled by statute enacted on the subjects of bail.

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Citing:

2 Hale, P. C., 129.
4th Co. Inst., 71.
2 Comp. Dig., p. 6 (Tit. F., 3).
1 Bac. Ab., 483-493.
2 Hawk. P. C., 117.

In *People* v. *Perry*, 8th Abbot. pr., N. S. (N. Y. S. C.), 27, where Perry was charged with murder, it was there held: "The court has power in all cases to grant bail whether it be treason, murder or other offense."

Citing:

Ex parte Taylor, 5 Cow. (N. Y.), 39.
People v. *Goodwin*, 1st Wheeler' Cr. Cas., 434.

Judge Hallet erred again in the Carrier case, supra, by holding that the words in Section 6270, Title 66 U. S. R. S., to the effect that, "the commissioner shall issue his warrant for the commitment of the prisoner to the jail, there to remain until such surrender shall be made," prevented the giving of bail.

These words were inserted as a protection to the commissioner in committing the prisoner to jail, and to authorize the jailer to receive the prisoner. This was a *grant* of power, not a *limitation* of the commissioner's powers. The words, *"to remain until surrender shall be made,"* do not mean that the court, having power to commit or discharge, would not have the power to admit to bail, and the act of Congress in this respect must be construed to mean, "to await the due process of law."

People v. *Kennedy*, 2 Park Crim. Rep. (N. Y.), 316.

These words were not intended to prevent the giving of bail. If they were, then the section in this respect is *unconstitutional* for this reason, if not for the reasons already assigned, and Judge Hallet's construction of these words makes the act unconstitutional, because there is nothing in the federal constitution granting to Congress the right and power to deny a prisoner's right to bail under the constitution.

Congress is surrounded by limitations, and Article 8 of the federal constitution, which says excessive bail shall not be required, amounts to a limitation on the power of Congress to refuse bail.

The opinion in the Carrier case is contrary to the opinion in *Hudson* v. *Parker,* 156 U. S., 288, where it was held that the statutes of the United States have been framed upon the theory that a person accused of crime shall not until he has been finally adjudged guilty in the court of last resort, be compelled to undergo imprisonment, but may be admitted to bail.

The court of King's bench or any judge thereof in the plenitude of their power, may admit to bail in all cases whatsoever.

Rex v. *Rudd,* Cowper, 331.
Rex v. *March,* 3 East, 137.
Kendall's case, 5th Moody, 78.
Rex v. *Wyndham,* 1 Stra., 2.
Watson case, 1st Salk, 106.
Page v. *Price,* 3rd Salk, 57.
Rex v. *Kendal et al.,* 1 Raymond's Repts., 65.

The power to admit to bail was recognized in case of high treason. Combs' case, 10th Moody, 334.

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Those courts in the United States that exercise jurisdiction similar to that of the King's bench, have inherited the same power as regards bail.

A. & E. Ency. of Law, Vol. 3 (2nd Ed.), 656.

Citing cases in Georgia, Indiana, Louisiana, Minnesota, Mississippi, New Hampshire, New Jersey, New York, South Carolina and Vermont.

It is a general rule, that any court or magistrate that has jurisdiction to try a prisoner in any case, has jurisdiction to discharge him, and *a fortiori* to admit him to bail.

A. & E. Encyc. of Law, Vol. 3 (2nd Ed.), 654.

Citing:

People v. *Goodwin*, 1 Wheel. Cr. Cas., 434.
People v. *Van Horn*, 8 Barb. (N. Y.), 158.
People v. *Shattuck*, 6th Ab. (N. C.), 37.
State v. *Edna*, 4 D. E. V. & B. (N. Car.), 318.
Com. v. *Lemley*, 2 Pitts. (Pa), 362.
Thomas v. *State*, 12 Texas App., 416.
State Tr. v. *Ralfe*, 15 Vt., 9.
People v. *Kennedy*, 2 Park Cr. Rep. (N. Y.), 312.

The rule as to felony cases has been very much relaxed in modern times, both in England and in the United States, and bail is now grantable of course in all felonies not capital.

A. & E. Ency., 3 Vol. (2nd Ed.), p. 666.
3rd Hawk. P. C., 225; and New York cases above cited.

II.

Sec. 9 of British statutes, enacted in 1870, applying to international extradition and the treaty between the United States and the British possessions (33 and 34 Vict. C., 52), is:

> "The police magistrate shall hear the case in the same manner and have the same *jurisdiction and powers* as near as may be as if the prisoner were brought before him charged with an indictable offense committed in England."

This includes the power to bail.

On the question as to whether or not the tendency in these modern times in all extradition matters is to admit to bail, it is significant to notice that England in 1881 pasesd an act, the enacting clause of which is as follows:

> "An Act to amend the law with respect to amend the fugitive law in her Majesty's dominions, and for other purposes conencted with the trial of offenders." 44 and 45 Vict. Ch., 69.

It is provided in section 5 that

> "A fugitive when apprehended shall be brought before a magistrate, who shall hear the case in the same manner and have the same jurisdiction and powers as near as may be (including the power to remand and remit to bail) as if the fugitives were charged with an offense committed within his jurisdiction." * * *
>
> "A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding seven days at any one time."

It is also significant to notice that the English people regulated the question of continuances in such cases by statute and limited the length of time of each continuance to seven days.

Judge Blatchford, *in re* Farez, 7 Blatch., 345, said that in United States cases the commissioner should follow the States statutes and adopt the mode of procedure provided for in the States statutes, and that a like rule should be observed in *international extradition cases.*

III.

The argument by appellee, that no ground has been shown by the appellants overcoming the finding of the commissioner or the judge of the District Court that bail was not allowed, ought not to have the slightest weight under the facts and circumstances in this case.

1st. Because the appellant's right to bail is a constitutional right.

The appellants prayed for bail at every stage of this proceeding, have exhausted every remedy and have preserved their rights by exception. What more could they do?

2nd. It is clear from the facts in the case at bar, that the commissioner and district judge, in the case at bar, denied the motion of the appellants for bail because they thought that no bail could be granted in such a case, and that they had no discretion in the matter.

IV.

The evidence was omitted in the record for the reason, that this court has repeatedly held that it will not pass on the sufficiency of the evidence introduced before the commissioner.

The court will not look at the evidence in any case

where the complaint is insufficient to confer jurisdiction, or to determine the jurisdiction of the commissioner where such jurisdiction does not depend on the evidence.

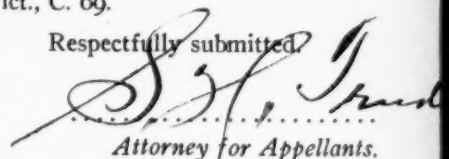
The amount of bail can be determined by the nature of the accusations made in the complaint, in accordance to the practice before examining magistrates or on indictments, without hearing any evidence in the first instance.

V.

I believe the reason why the Carrier case is the only case where a federal court has passed on the question of bail is because bail has in all other cases of extradition been allowed. Bail is allowed by statute in England.

33 and 34 Vict., C. 52.
44 and 45 Vict., C. 69.

Respectfully submitted,



Attorney for Appellants.